

MEMORANDUM OF UNDERSTANDING
Between
ENVIRONMENTAL PROTECTION AGENCY, REGION IX
and
BUREAU OF LAND MANAGEMENT
Concerning
THE ANACONDA MINE SITE, YERINGTON, NEVADA

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I. RECITALS

- A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the U.S. Environmental Protection Agency Region IX (EPA) and the United States Department of the Interior (Interior), Bureau of Land Management (BLM) (hereinafter collectively referred to as "parties") to coordinate response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, at the Anaconda Mine Site in Yerington, Lyon County, Nevada (Site). This MOU also provides a process for resolving disputes between EPA and BLM that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.
- B. This MOU is intended to implement, and to be consistent with the 2007 "Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites" executed by EPA, the United States Department of Agriculture, and Interior. In that Statement of Principles, the parties recognized that, to expeditiously and efficiently implement the necessary response actions at mixed ownership sites, they should coordinate their respective authorities under CERCLA. To the extent practicable, the parties agree to make this MOU consistent with the Statement of Principles, however, in the case of a conflict this MOU controls.
- C. Pursuant to CERCLA, the President has authority to respond to releases of pollutants, contaminants, and hazardous substances to protect the public health or welfare or the environment.
- D. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), abatement actions (42 U.S.C. § 9606), cost recovery (42 U.S.C. § 9607) and entering into agreements with potentially responsible parties (PRPs) to perform work (42 U.S.C. § 9622), to several executive departments and agencies, including the EPA and Interior.
- E. The Secretary of the Interior has re-delegated certain of these authorities under Executive Order 12580 to the Director of BLM with respect to land and facilities under BLM

jurisdiction, custody or control (hereinafter referred to as BLM-managed lands). The Director of BLM has re-delegated most of these authorities to BLM State Directors.

- F. BLM administers certain lands on behalf of the public. BLM is, with certain limitations, delegated the President's CERCLA authority where a release of a hazardous substance is on or the sole source of the release is from a facility on BLM-managed lands. Executive Order 12580, §§ 2(e)(1), and 4(b)(1).
- G. The Site is a mixed-ownership hardrock mining site, located partially on private land and partially on BLM-managed lands within the established boundaries of the Carson City BLM Management Unit. The BLM-managed lands portion of the Site is administered by BLM, District Office in Carson City, Nevada. A map of the Site that identifies BLM-managed lands is attached to and incorporated into this MOU as Attachment A.
- H. Since 2000, and consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, EPA has completed an expanded preliminary assessment at the Site, and has been coordinating with BLM and the Nevada Department of Environmental Protection to advance response actions to investigate and mitigate substantial threats to the public health and welfare and the environment from hazardous substances related to mining activity at the Site. EPA has issued orders to facilitate enforcement lead response for Operable Units 1-7 at the Site. EPA also has completed a draft Remedial Investigation/Feasibility Study for Operable Unit 8 at the Site, which includes a portion of BLM-managed lands and is comprised of leach heaps and drainage ponds.
- I. The parties have determined that a response action may be needed to reduce or remove the threat to human health and the environment at the Site. EPA and BLM plan to address these threats of releases of hazardous substances into the environment through the coordinated exercise of the agencies' respective CERCLA authorities.
- J. All response actions covered by this MOU shall not be inconsistent with the NCP, including assurances of state consultation by EPA for Parts II, III, and IV herein pursuant to 40 C.F.R. 300.435 and Subpart F for remedial actions and potential future state responsibility for operation and maintenance. Coordination with the state also should occur with any planned removal actions, in particular with regard to any future post-removal site control activities.
- K. There are past and present owners and operators of the Site, which, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), may be liable for performance of Site investigations and other response actions, and for reimbursing response costs incurred by either or both of the parties. To the maximum extent practicable, the parties will look first to such potentially responsible parties (PRPs) to fund or implement necessary investigative or response activities at the Site.

- L. BLM understands that EPA expects to propose the Site for listing on the National Priorities List (NPL) in September 2016. This MOU remains in full force and effect if EPA lists the Site on the NPL.

II. COORDINATION AND COOPERATION

- A. The EPA and BLM have designated the following positions or persons who will be involved with the day-to-day coordination, communication and decision-making regarding the exercise of the agencies' respective authorities at and near the Site:

EPA Remedial Project Manager (RPM)

David Seter
EPA Superfund Division
75 Hawthorne Street
San Francisco, CA 94105
Phone: 415-972-3250
seter.david@epa.gov

BLM Project Manager (Project Manager)

Dave Davis
BLM Nevada State Office
1340 Financial Boulevard
PO Box 12000
Reno, NV 89502
Phone: 775-861-6575
drdavis@blm.gov

The EPA and BLM may each designate another individual to serve as their point-of-contact by providing written notice to the other party at least five (5) business days before the change becomes effective.

- B. EPA will be the lead agency, as defined in the NCP, for response actions involving a parcel, project, operable unit for contamination located on the private portion of the Site or when conducted by a PRP. BLM will be the lead agency, as defined in the NCP, for response actions involving a parcel, project or operable unit located on BLM-managed lands, except, in view of the circumstances at this Site, when response actions are conducted by a PRP. To facilitate an effective and efficient response at the Site, the parties may designate different lead roles for specific projects by separate agreement consistent with their respective authorities.
- C. EPA and BLM each intend, subject to Section IV of this MOU, to seek funding, as appropriate, for their respective responsibilities at the Site.

- D. Generally, unless another method of allocation is agreed to by the parties, when undertaking joint cleanup actions pursuant to this MOU, the EPA will be responsible for the costs associated with response actions on or waste removed from private lands, and BLM will be responsible for the costs associated with response actions on or waste removed from BLM-managed lands; provided that neither party waives, and each does specifically reserve any and all rights, causes of action or defenses. In the event that a future apportionment of costs between EPA and BLM is required to address future response actions regarding any joint waste repositories located at this Site, the EPA and BLM intend to discuss and reach agreement on an allocation of such costs. In those discussions, EPA and BLM will consider the 2005 "Policy on Joint Repositories at Mixed-Ownership Hardrock Mine Sites."
- E. The RPM and the Project Manager shall communicate by phone, correspondence and meetings, regularly, about response activities at the Site, to review the work status and to resolve any existing or anticipated technical issues. The RPM and the Project Manager shall coordinate with each other to implement response actions at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at the Site, including any meetings with third parties (i.e., contractor(s), federal and state regulatory agencies, and PRPs). In most cases, reasonable prior notice shall be at least seven (7) calendar days. In the event that a meeting needs to be scheduled on shorter notice, the RPM or Project Manager shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting. This coordination shall also include reasonable prior notice of significant activities to take place at the Site.
- F. EPA and BLM will provide each other with copies of documents needed to fulfill the purposes of this MOU. In addition, where the EPA is requiring that a respondent or signatory to an order or agreement submit documents to the EPA, or BLM is requiring that a respondent or signatory to an order or agreement submit documents to BLM, the EPA, or BLM, as appropriate, will require the respondent or signatory also provide a copy of those documents to the RPM or Project Manager. The RPM and the Project Manager will cooperatively determine which documents related to the Site are to be copied and provided to the other agency either directly from one agency to the other as opposed to being provided by third-parties. Where the EPA or BLM need to obtain comments of the other party on a document, the RPM and the Project Manager will cooperatively determine how and when those comments will be provided. For response actions on or affecting BLM-managed land, BLM shall review and comment on all documents, and submit comments to EPA, if appropriate, in a timely manner.
- G. A schedule of activities for the Site should be established by EPA and BLM, and be used for planning purposes. The schedule should be updated periodically (by a designated party) to reflect actual progress on work at the Site and current projections.

H. Consistent with Section II. B., where EPA plans and conducts response actions on BLM-managed lands consistent with its lead authority, or BLM plans and conducts response actions on or relevant to private lands consistent with its lead authority, the RPM and the Project Manager shall coordinate on major decision points and documents respectively in accordance with their lead authority, as set forth below.

- (i) The scope of work to be performed and estimated costs;
- (ii) Project management procedures and contracts;
- (iii) Enforcement activities against PRPs, including issuing 104(e) information requests or unilateral orders, negotiating AOCs or consent decrees, and oversight of PRP conducted work;
- (iv) The scope and extent of Site characterization and sampling;
- (v) The manner and content of community relations activities such as the community relations plan, press releases, public notices and public meetings;
- (vi) CERCLA response action documents including, but not limited to:
 - Engineering evaluations/cost analyses and remedial investigation/feasibility studies;
 - Draft and final risk assessments; and
 - Design and construction plans and documents;
- (vii) The selection of any response actions via action memoranda, proposed plans, and records of decision, including, but not limited to any determination of Applicable or Relevant and Appropriate Requirements, and the selection of post-response action Site control requirements for completed response actions;
- (viii) The establishment of a joint mine waste repository;
- (ix) Certifications of completion issued for response actions at the Site;
- (x) Long term operations and maintenance/post removal Site control; and
- (xi) Future response actions in the event of a remedy failure.

- I. Unless otherwise agreed to by the parties, EPA and BLM shall jointly approve any final decision documents prepared or issued for response actions at the Site, including action memoranda and records of decision.
- J. The Project Manager should advise the RPM regarding any issues and concerns of special interest to BLM. The Project Manager should assist the RPM in identifying and communicating with BLM personnel who can provide the most accurate and complete information concerning the Site, as needed.
- K. BLM consents to the EPA and its contractors, and responsible parties subject to EPA's oversight, having access to BLM-managed lands within the Site for the purposes of conducting response actions. To the extent practicable, EPA shall provide advance notice to BLM, through the Project Manager, at least seven (7) days prior to entering BLM-managed lands.
- L. EPA and BLM will cooperate and coordinate to the extent practicable regarding enforcement against PRPs. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and BLM solicitors and, as appropriate, Department of Justice attorney(s).
- M. When EPA or BLM proposes to use equipment, improvements or facilities that are within the responsibility of the other agency, including roads for access, the RPM and the Project Manager should consult to determine which party will be responsible for maintaining the respective equipment, improvements or facilities to be used.

III. DISPUTE RESOLUTION

- A. Consultation between the RPM and the Project Manager should resolve the vast majority, if not all, technical issues between EPA and BLM.
- B. If the RPM and the Project Manager do not reach agreement on a disputed item arising from activities at the Site, the issue should be elevated to the appropriate senior management at BLM and the EPA for further discussion and resolution.

IV. LIMITATIONS AND DURATION OF AGREEMENT

- A. BLM and EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.

- B. Nothing in this MOU shall be considered as obligating EPA or BLM to expend, or as involving the United States, in any contract or other obligation for the future payment of money. The parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341.
- C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.
- D. This MOU is not intended to, and does not, create any right, benefit or trust obligation, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.
- E. Nothing in this MOU shall restrict BLM or EPA from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. After giving sixty (60) days written notice, either party may withdraw from this MOU for good cause, including the provisions set forth in Section III(C) above. This MOU may be amended at any time by agreement of the parties in writing.
- G. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.
- H. This MOU is effective upon the date signed by the last of the parties.

In WITNESS WHEREOF, the parties hereto have executed this MOU and it shall be effective as of the last date written below.

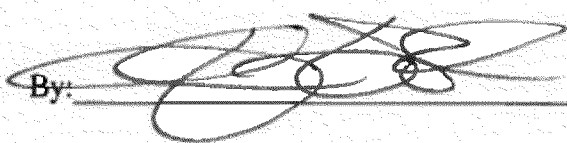
**ENVIRONMENTAL PROTECTION
AGENCY, REGION IX**

By: _____

Date: 24 June 2016

Enrique Manzanilla
US EPA, Region IX
Superfund Division Director
75 Hawthorne Street
San Francisco, CA 94105

**UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT**

By: _____

Date: 28 June 2016

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